

[SUBMITTING COUNSEL ON  
SIGNATURE LINE]

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Olean Wholesale Grocery Cooperative,  
Inc., on behalf of itself and all others  
similarly situated,

*Plaintiff,*

v.

BUMBLE BEE FOODS LLC, TRI-UNION  
SEAFOODS LLC, AND STARKIST  
COMPANY,

*Defendants.*

Pacific Groservice Inc. d/b/a/ PITCO  
Foods, on behalf of itself and all others  
similarly situated,

*Plaintiff,*

v.

BUMBLE BEE FOODS LLC, TRI-

Case No. 3:15-cv-01714-JLS-MDD

**CLASS ACTION**

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF PLAINTIFFS'  
MOTION TO CONSOLIDATE**

Hon. Janis L. Sammartino

DATE: November 5, 2015

TIME: 1:30 P.M.

CRTRM: 4A

Case No. 3:15-cv-01791-JLS-MDD

1 UNION SEAFOODS LLC, and  
2 STARKIST COMPANY,

3 *Defendants.*

4  
5 Beverly Youngblood, on behalf of herself  
6 and all others similarly situated,

7 *Plaintiff,*

8 v.

9 BUMBLE BEE FOODS LLC, TRI-UNION  
10 SEAFOODS LLC, AND STARKIST  
11 COMPANY,

12 *Defendants.*

13  
14 Trepco Imports and Distribution LTD, on  
15 behalf of itself and all others similarly  
16 situated,

17 *Plaintiff,*

18 v.

19 BUMBLE BEE FOODS, LLC f/k/a  
20 BUMBLE BEE SEAFOODS, LLC, TRI-  
21 UNION SEAFOODS, LLC d/b/a  
22 CHICKEN OF THE SEA, STARKIST  
23 COMPANY, AND KING OSCAR, INC.,

24 *Defendants.*

25 Louise Ann Davis Mathews, on behalf of  
26 herself and all others similarly situated,

27 *Plaintiff,*  
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Case No. 3:15-cv-01863-JLS-MDD

Case No. 3:15-cv-01987-AJB-KSC

Case No. 3:15-cv-01878-JLS-MDD

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<p>v.</p> <p>BUMBLE BEE FOODS LLC, TRI- UNION SEAFOODS LLC, and STARKIST COMPANY,</p> <p><i>Defendants.</i></p>	
<p>Capitol Hill Supermarket, on behalf of itself and all others similarly situated,</p> <p><i>Plaintiff,</i></p>	
<p>v.</p> <p>BUMBLE BEE FOODS LLC, TRI-UNION SEAFOODS LLC, AND STARKIST COMPANY,</p> <p><i>Defendants.</i></p>	
<p>James Walnum, on behalf of himself and all others similarly situated,</p> <p><i>Plaintiff,</i></p>	
<p>v.</p> <p>BUMBLE BEE FOODS LLC, STARKIST COMPANY, TRI-UNION SEAFOODS LLC, AND KING OSCAR, INC.,</p> <p><i>Defendants.</i></p>	
<p>Evelyn Olive, et al., on behalf of themselves and all others similarly situated,</p>	

Case No. 3:15-cv-01867-JLS-MDD

Case No. 3:15-cv-01887-BAS-RBB

Case No. 3:15-cv-01909-BEN-  
WVG

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<i>Plaintiffs,</i>
v.
BUMBLE BEE FOODS LLC, TRI- UNION SEAFOODS LLC, STARKIST COMPANY, AND KING OSCAR, INC.,
<i>Defendants.</i>
Colin Moore, on behalf of himself and all others similarly situated,
<i>Plaintiff,</i>
v.
BUMBLE BEE FOODS LLC, TRI-UNION SEAFOODS LLC, AND STARKIST COMPANY,
<i>Defendants.</i>
Jennifer A. Nelson, et al., on behalf of themselves and all others similarly situated,
<i>Plaintiffs,</i>
v.
BUMBLE BEE FOODS LLC, TRI-UNION SEAFOODS LLC, STARKIST COMPANY, AND KING OSCAR, INC.,
<i>Defendants.</i>
Dutch Village Restaurant of itself and all others similarly situated,

Case No. 3:15-cv-01911-JLS-MDD

Case No. 3:15-cv-01979-JLS-MDD

Case No. 3:15-cv-02020-LAB-  
BLM

*Plaintiff,*

v.

BUMBLE BEE FOODS LLC, TRI-UNION  
SEAFOODS LLC, AND STARKIST  
COMPANY,

*Defendants.*

Steven M. Colberg, et al., on behalf of  
themselves and all others similarly  
situated,

*Plaintiffs,*

v.

BUMBLE BEE FOODS LLC, STARKIST  
COMPANY, TRI-UNION SEAFOODS  
LLC, AND KING OSCAR, INC.,

*Defendants.*

Amy Joseph, on behalf of herself and all  
others similarly situated,

*Plaintiff,*

v.

BUMBLE BEE FOODS, LLC, TRI-UNION  
SEAFOODS, LLC, STARKIST  
COMPANY, AND KING OSCAR, INC.

*Defendants.*

Case No. 3:15-cv-02011-L-MDD

Case No. 3:15-cv-02017-BTM-  
NLS

Jinkyoun Moon, et al., on behalf of  
themselves and all others similarly  
situated,

*Plaintiffs,*

v.

BUMBLE BEE FOODS LLC, STARKIST  
COMPANY, TRI-UNION SEAFOODS  
LLC, AND KING OSCAR, INC.,

*Defendants.*

Case No. 3:15-cv-02006-H-JMA

Rick Musgrave, on behalf of himself and  
all others similarly situated,

*Plaintiff,*

v.

BUMBLE BEE FOODS LLC, STARKIST  
COMPANY, TRI-UNION SEAFOODS  
LLC, AND KING OSCAR, INC.,

*Defendants.*

Case No. 3:15-cv-02012-BAS-RBB

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Presently pending in the United States District Court for the Southern District of California are several actions against defendants Bumble Bee Foods LLC, Tri-Union Seafoods LLC, and StarKist Company (collectively, “Defendants<sup>1</sup>”), alleging antitrust violations under federal and state law.

The direct purchaser plaintiffs Pacific Groservice Inc. d/b/a/ PITCO Foods (“PITCO”); Olean Wholesale Grocery Cooperative, Inc. (“Olean”); Beverly Youngblood (“Youngblood”); and Trepcos Imports and Distribution LTD (“Trepcos”) have filed four complaints in this District on behalf of direct purchasers of packaged seafood products (“PSPs”) against Defendants in the following actions: *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-0714-JLS-MDD (the “*Olean* Action”); *Pacific Groservice Inc. d/b/a PITCO Foods v. Bumble Bee Foods LLC et al.*, No. 3:15-cv-01791-JLS-MDD (the “*PITCO* Action”); *Youngblood v. Bumble Bee Foods LLC et al.*, No. 3:15-cv-01863-JLS-MDD (the “*Youngblood* Action”); and *Trepcos Imports and Distribution LTD v. Bumble Bee Foods LLC et al.*, No. 3:15-cv-01987-AJB-KSC (the “*Trepcos* Action”) (collectively, “Direct Purchaser Actions”).

Similarly, two separate groups of indirect purchasers of PSPs have filed a total of eleven complaints in this District. First, the following “End-Payor” actions have been filed: *Mathews v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01878-JLS-MDD; *Walnum v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01887-BAS-RBB; *Olive v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01909-BEN-WVG; *Moore v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01911-JLS-MDD; *Nelson v. Bumble Bee*

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<sup>1</sup> Defendants also include King Oscar, Inc. (“King Oscar”) in certain of the actions. King Oscar is an entity that shares a common corporate owner as Tri-Union Seafoods LLC.

1 *Foods LLC, et al.*, No. 3:15-cv-01979-JLS-MDD; *Steven M. Colberg, et al., v.*  
 2 *Bumble Bee Foods LLC*, Case No. 3:15-cv-02011-L-MDD; *Jinkyoun Moon et al. v.*  
 3 *Bumble Bee Foods LLC et al.*, Case No. 3:15-cv-02006-H-JMA; *Rick Musgrave v.*  
 4 *Bumble Bee Foods LLC et al.*, Case No. 3:15-cv-02012-BAS-RBB; *Amy Joseph v.*  
 5 *Bumble Bee Foods, LLC, et al.*, Case No. 3:15-cv-02017-BTM-NLS.

6 Second, the following Commercial Food Preparer actions have been filed:  
 7 *Capitol Hill Supermarket v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01867-AJB-  
 8 WVG; *Dutch Village Restaurant v. Bumble Bee Foods LLC et al.*, Case No. 3:15-cv-  
 9 02020-LAB-BLM.

10 The indirect purchasers in the End Payor Actions allege violations of certain  
 11 antitrust and consumer protection laws on behalf of consumers and other end users  
 12 that purchased PSPs for their (or their families') personal consumption. The indirect  
 13 purchasers in the Commercial Food Preparer Actions similarly allege violations of  
 14 certain antitrust and consumer protection laws but do so on behalf of indirect  
 15 purchasers of PSPs that were used in commercial preparation of other food products,  
 16 such as sandwiches at deli counters.

17 All of these actions are "related" to the *Olean* Action, though not all of them  
 18 have yet been transferred to Judge Sammartino's docket.

19 On August 28, 2015, Olean filed a motion to transfer and centralize related  
 20 actions in the Southern District of California before the United States Judicial Panel  
 21 on Multidistrict Litigation ("JPML") due to new case filings in other districts. *See In*  
 22 *Re: Packaged Seafood Products Antitrust Litigation*, MDL No. 2670, Dkt. No. 1.  
 23 The responses to the JPML motion are due on or before September 21, 2015. Olean  
 24 has argued in its JPML motion that this Court, and specifically Judge Sammartino,  
 25 the judge with the low-numbered case in this district, should preside over this  
 26 pending multi-district proceeding. The JPML is likely to place the matter on its  
 27 December 3, 2015 docket and a decision on transfer is expected 2-3 weeks  
 28 thereafter.

1        Given the number of filings that have occurred to date, and to allow counsel in  
2 the various cases ready access to relevant pleadings and orders, the Direct Purchaser  
3 Plaintiffs and both groups of Indirect Purchaser Plaintiffs now move to consolidate  
4 the cases in one docket accessible by all.

## 5        **II. FACTUAL BACKGROUND**

6        The plaintiffs in all of the above-captioned actions—the direct purchaser  
7 actions and both groups of indirect purchaser actions—allege a conspiracy by the  
8 three largest producers of PSPs in the United States, its territories and the District of  
9 Columbia. The term “PSPs” refer to shelf-stable seafood products (predominantly  
10 tuna) that are sold in cans, pouches or ready-to-eat serving packages.

11        For nearly five decades (from approximately 1950 until 2000), tuna - almost  
12 all of which was canned—was the most popular seafood in the United States.  
13 According to Roger Corey’s 1990 report “Tuna: Competitive Conditions Affecting  
14 the U.S. and European Tuna Industries in Domestic and Foreign Markets,” more  
15 than 85 percent of American households kept canned tuna. In 1989, at the height of  
16 the country's demand for canned tuna, the average American ate almost four pounds  
17 of tuna each year. In 1990, the International Trade commission estimated that  
18 Americans were responsible for eating about a third of the global supply of tuna,  
19 and between half and two-thirds of the global supply of canned tuna.

20        However, the demand for canned tuna has been trending down. Since 1989,  
21 per capita canned tuna consumption has almost halved. Since 1999, canned seafood  
22 sales have fallen by nearly 30 percent. In 2012, canned tuna was responsible for just  
23 over 16 percent of all fish and seafood consumption in the U.S., the lowest reading  
24 in nearly 60 years. Nevertheless, the price for canned tuna has been trending up,  
25 defying the economic fundamentals.

26        Defendants are the three largest domestic manufacturers of PSPs. The industry  
27 is highly concentrated. According to a May 2012 presentation by Bumble Bee Foods  
28 LLC (“Bumble Bee”), it had 29% of the domestic shelf-stable seafood market in

2011, Tri-Union Seafoods LLC (“Tri-Union”) had 18.4% and StarKist Company (“Starkist”) had 25.3%. The remaining market share was comprised of smaller companies and private label brands. With respect to shelf-stable tuna, StarKist had 34.6% of the market, Bumble Bee had 27.8% and Tri-Union had 19.4%. In December of 2014, the *Wall Street Journal* reported that the Defendants’ respective shares of the domestic market for canned tuna were 13% for Tri-Union, 25% for Bumble Bee, and 36% for StarKist.

On July 22, 2015, Tri-Union’s parent company disclosed that the Antitrust Division of the United States Department of Justice issued a subpoena, requiring Tri-Union to provide relevant information in relation to an antitrust investigation of the packaged seafood industry in the United States. All of the complaints focus on these core facts with additional supporting details.

### III. ARGUMENT

#### A. The Direct Purchaser Actions, End Payor Actions and Commercial Food Preparer Actions Should Be Separately Consolidated for All Purposes and Coordinated.

Federal Rules of Civil Procedure 42(a) grants courts the authority to consolidate actions that “involve a common question of law or fact.” *Id. See also, In re Equity Funding Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 175 (C.D. Cal. 1976); *In re Adams Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987). Furthermore, “[a] district court has broad discretion under this rule to consolidate cases pending in the same district,” regardless of whether those actions are pending before different judges. *Investors Research Co. v. United States Dist. Court for Cent. Dist.*, No. 89-70202, 1989 U.S. App. LEXIS 8261, \*1 (9th Cir. June 8, 1989). Indeed, Fed. R. Civ. P. 42(a) “was designed and intended to encourage such consolidation where possible.” *United States v. Knauer*, 149 F.2d 519, 520 (7th Cir. 1945), *aff’d*, 328 U.S. 654, *reh’g denied*, 329 U.S. 818, *petition denied*, 332 U.S. 834; *Perez-Funez v. Dist. Director, Immigration & Naturalization Serv.*, 611 F. Supp. 990, 994 (C.D.

1 Cal. 1984) (“A court has broad discretion in deciding whether or not to grant a  
2 motion for consolidation, although, typically, consolidation is favored.”) (citations  
3 omitted). The actions pending before this Court are appropriate for consolidation;  
4 they involve substantially duplicative or overlapping defendants, wrongful acts,  
5 conduct, and occurrences.

6 Putative class actions are particularly well-suited for consolidation pursuant to  
7 Rule 42(a) because unification expedites pretrial proceedings, reduces case  
8 duplication, avoids the need to contact parties and witnesses for multiple  
9 proceedings and minimizes the expenditure of time and money for all parties  
10 involved. *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 773 (9th Cir. 1977);  
11 *Takeda v. Turbodyne Techs., Inc.*, 67 F.Supp.2d 1129, 1130 (C.D. Cal. 1999).  
12 Consolidating class actions simplifies pretrial and discovery motions, class action  
13 issues and clerical and administrative management duties. Consolidation also  
14 reduces the confusion and delay that may result from prosecuting related putative  
15 class actions separately. *Id.*

16 Courts in this Circuit have exercised their authority to consolidate similar  
17 actions alleging illegal price fixing in violation of similar federal and state antitrust  
18 laws. For example, in *In Re Flash Memory Antitrust Litig.*, No. C-07-0086-SBA,  
19 2007 U.S. Dist. LEXIS 82719, \*7-8 (N.D. Cal. October 17, 2007), the Northern  
20 District Court exercised its judicial authority to order the consolidation of numerous  
21 related actions. There, as here, the actions alleged that several overlapping  
22 defendants “conspired to fix, raise, maintain, or stabilize the prices of” a specific  
23 product, thereby engaging in violation of Section 1 of the Sherman Antitrust Act,  
24 among other state antitrust laws. Thus, consolidation was appropriate, as the actions  
25 “involve[d] many of the same defendants and share[d] overlapping factual and legal  
26 claims.” *Id.*

27 Similarly, *Kamakhi v. Am. Soc’y for Reprod. Med.*, No. C 11-01781, 2012  
28 U.S. Dist. LEXIS 34563 (N.D. Cal. March 14, 2012), also involved a motion to

1 consolidate class actions where plaintiffs alleged a price fixing agreement by similar  
 2 defendants in violation of the Sherman Antitrust Act. The Northern District Court  
 3 granted consolidation, finding that the pending actions “involve[d] common  
 4 questions of law and fact,” agreeing with plaintiff’s assertion that “consolidation  
 5 [would] serve the interests of efficiency and judicial economy.” *Id.* at \*4.

6 The claims and causes of action among the Direct Purchaser, End Payor and  
 7 Commercial Food Preparer Actions are nearly identical, inviting consolidation. The  
 8 actions all involve substantial overlap and similar questions of law and fact.  
 9 Duplicative motions and discovery would likely result if each of the Direct  
 10 Purchaser Actions, End Payor Actions and the Commercial Food Preparer Actions  
 11 proceeded independently. Separate consolidation of each group before a single judge  
 12 will promote conservation of the parties’ resources, suit the interests of judicial  
 13 economy, and avoid the potential for conflicting results. Consequently, this Court  
 14 should separately consolidate the Direct Purchaser, End Payor and Commercial Food  
 15 Preparer Actions.

#### 16 IV. CONCLUSION

17 In the interest of judicial economy and for the additional reasons set forth  
 18 above, Direct Purchaser Plaintiffs and both groups of Indirect Purchaser Plaintiffs  
 19 respectfully request that the Court issue an Order:

20 (a) consolidating the following direct purchaser actions into a Consolidated  
 21 Direct Purchaser Action: *Olean Wholesale Grocery Coop., Inc. v. Bumble*  
 22 *Bee Foods LLC, et al.*, No. 3:15-cv-0714-JLS-MDD; *Pacific Groservice*  
 23 *Inc. d/b/a PITCO Foods v. Bumble Bee Foods LLC et al.*, No. 3:15-cv-  
 24 01791-JLS-MDD; *Youngblood v. Bumble Bee Foods LLC et al.*, No. 3:15-  
 25 cv-01863-JLS-MDD; and *Trepco Imports and Distribution LTD v. Bumble*  
 26 *Bee Foods LLC et al.*, No. 3:15-cv-01987-AJB-KSC;

27 (b) consolidating the following indirect purchaser end payor actions into a  
 28



Consolidated End Payor Action: *Mathews v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01878-JLS-MDD; *Walnum v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01887-BAS-RBB; *Olive v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01909-BEN-WVG; *Moore v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01911-JLS-MDD; *Nelson v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01979-JLS-MDD; *Steven M. Colberg, et al., v. Bumble Bee Foods LLC*, Case No. 3:15-cv-02011-L-MDD; *Jinkyoun Moon et al. v. Bumble Bee Foods LLC et al.*, Case No. 3:15-cv-02006-H-JMA; *Rick Musgrave v. Bumble Bee Foods LLC et al.*, Case No. 3:15-cv-02012-BAS-RBB; *Amy Joseph v. Bumble Bee Foods, LLC, et al.*, Case No. 3:15-cv-02017-BTM-NLS;

(c) consolidating the following indirect purchaser commercial food preparer actions into a Consolidated Commerical Food Preparer Action: *Capitol Hill Supermarket v. Bumble Bee Foods LLC, et al.*, No. 3:15-cv-01867-AJB-WVG; *Dutch Village Restaurant v. Bumble Bee Foods LLC et al.*, Case No. 3:15-cv-02020-LAB-BLM; and

(d) coordinating the Consolidated Direct Purchaser Action, the Consolidated End Payor Action, and the Consolidated Commercial Food Preparer Action under one case number, Case No. 3:15-cv-01714-JLS-MDD, all as set forth in more detail in the proposed order.

Dated: September 14, 2015

Respectfully submitted,

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